

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Process Reform for Executive Branch Review of)	IB Docket No. 16-155
Certain FCC Applications and Petitions)	
Involving Foreign Ownership)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation (“Sprint”) hereby submits comments on the Notice of Proposed Rulemaking issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.¹ As an initial matter, Sprint wishes to commend the Executive Branch agencies and the Commission for their efforts to streamline the review process for certain applications and petitions for declaratory ruling involving foreign ownership.² In these comments, Sprint sets forth suggestions designed to ensure that the reforms the Commission ultimately adopts result in certain, efficient, and transparent processes.³

¹ *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Notice of Proposed Rulemaking, FCC 16-79 (rel. June 24, 2016) (“NPRM” or “Notice”).

² *See, e.g., NTIA Letter Regarding Information and Certifications from Applicants and Petitioners for Certain International Authorizations*, Public Notice, 31 FCC Rcd 4677 (2016) (DA 16-531) (“Public Notice”); Letter from Lawrence E. Strickling, Assistant Secretary for Communications and Information and Administrator, National Telecommunications and Information Administration, U.S. Department of Commerce, to Marlene H. Dortch, FCC Secretary, at 1 (May 10, 2016), attached to Public Notice, IB Docket No. 16-155 (May 12, 2016) (“NTIA Letter”).

³ NPRM ¶ 1 (“[O]ur goals here are to identify ways in which both the Commission and the agencies might streamline and facilitate the process for obtaining information necessary for Executive Branch review and identify expected time frames, while ensuring that we continue to take Executive Branch concerns into consideration as part of our public interest review.”).

DISCUSSION

Establishing Timelines. The 90-day review schedule proposed in the Notice has the potential to bring much-needed certainty to the review process, thereby spurring investment in the U.S. communications sector.⁴ To realize these benefits, however, the Commission should eliminate three potential sources of delay from its proposed timeline.

(1) Public Notice Within 15 Days. The Commission proposes that it “will refer applications with reportable foreign ownership to the Executive Branch upon release of the public notice, and . . . that, at that time, the 90-day clock would begin.”⁵ To ensure that this clock starts as expeditiously as possible, the Commission should commit to placing any application subject to the Executive Branch review process on public notice within 15 days.

The Commission can achieve this 15-day target by reducing the steps that FCC staff must take before issuing the public notice. In particular, in determining whether an application is complete and should be placed on public notice, the Commission staff need not process or review the applicants’ responses to standard Executive Branch questions. Responses to these questions should be submitted directly to the Executive Branch agencies. As CTIA notes, “[i]t is unclear whether and how the proposal to require the submission of the questionnaires to the

⁴ See, e.g., Comments of Level 3 Communications, LLC, at 1 (“Over the past 12 years, Team Telecom national security reviews of new license applications, foreign ownership petitions, and transaction-consent applications have created considerable uncertainty regarding the timing and conditions of authorizations, rendered much more expensive the process of obtaining Commission authorizations, and likely deterred foreign investment in the United States – investment that benefits U.S. businesses and consumers, not just foreign investors.”) (“Level 3 Comments”); Comments of Pillsbury Winthrop Shaw Pittman LLP at 1-2 (“The existence of this uncertainty and lack of predictability has a chilling effect on prospective purchasers’ interest in entering into, and financing sources’ willingness and ability to fund, change of control transactions that are potentially subject to Team Telecom review.”) (“Pillsbury Comments”). (Unless otherwise noted, all comments cited herein were filed in IB Docket No. 16-155 on May 23, 2016.)

⁵ NPRM ¶ 39.

Commission, rather than directly to the Executive Branch as exists today, benefits the review process.”⁶ Instead of adding a new step and a new burden on FCC staff, the Commission should “require applicants with disclosable foreign ownership to certify in their application that they will provide complete responses to the questionnaire within a particular timeframe after filing the application.”⁷ In making this proposal, we note that the Commission routinely puts other applications on public notice promptly. For example, applications regarding licenses and spectrum leases that are filed in the Commission’s Universal Licensing System (“ULS”) generally appear on public notice within a week to nine days following the filing of the application.

(2) Follow-Up Questions Prior to Day 45. The Executive Branch agencies should be obligated to pose any follow-up questions or make any other requests for “additional information or clarification” prior to day 45 of the review process.⁸ This measure would increase transparency and “facilitate prompt resolution of issues and negotiation of mitigation measures.”⁹ This deadline also would prevent an applicant’s inability to respond to questions posed after day 45 from serving as the basis for exceeding the 90-day review timeframe. Importantly, there is no

⁶ Comments of CTIA at 5 (“CTIA Comments”).

⁷ *Id.*

⁸ With ultimate authority to render a final decision on all applications before it, the Commission undoubtedly has authority to impose a timeline on Executive Branch review. *See, e.g., Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, ¶ 66 (1997) (“We emphasize that the Commission will make an *independent* decision on applications to be considered and will evaluate concerns raised by the Executive Branch agencies *in light of all the issues raised* . . . in the context of a particular application.”) (emphasis added). While the FCC typically affords deference to the Executive Branch agencies, the Commission must appropriately balance the need for such deference with the need to facilitate and encourage the development of communications networks in a timely manner.

⁹ Comments of Telecommunications Companies at 16 (“Wiley Rein Comments”).

reason to believe that the midpoint of the review process is an unreasonable deadline. To the contrary, investigations undertaken as part of the CFIUS review process for far more complex transactions must be *completed* within 45 days.¹⁰

(3) Extension Requests No Later than Day 75. The Commission appropriately contemplates that there may be limited “cases of extraordinary complexity” in which additional review would be warranted.¹¹ The Commission further recognizes the importance of transparency with respect to such extension requests, proposing that the Executive Branch would be required to “explain[] why it was unable to complete its review within the initial 90-day review period.”¹² To provide the Commission with sufficient time in which to review such explanations, the Executive Branch agencies should submit any extension request no later than day 75 of the timeline. By this point, the agencies should be aware that a given case is so complicated that its resolution is not imminent.

Moreover, the Commission will need some time to review the merits of, and act on, any such extension requests. Extensions should be granted only in exceptional circumstances. As Level 3 explained, the “CFIUS process demonstrates the feasibility of reviewing complex transactions involving multiple parties, multiple jurisdictions, and multiple lines of business within 90 days or fewer.”¹³ As a result, for “narrower license applications and foreign ownership

¹⁰ 50 U.S.C. § 4565(b)(2)(C).

¹¹ NPRM ¶ 42; *see also id.* at Appendix B, Proposed Rule 47 C.F.R. § 1.6003(b) (“Proposed § 1.6003(b)”).

¹² Proposed § 1.6003(b); *see also* NPRM ¶ 43.

¹³ Level 3 Comments at 6.

petitions, as well as the same kinds of transactions reviewed by Team Telecom, . . . it [is] feasible to complete reviews along the lines of a CFIUS-type timescale.”¹⁴

Limiting Unnecessary Review. In the Notice, the Commission seeks comment on “whether there are categories of applications with foreign ownership that the Commission should generally not refer to the Executive Branch.”¹⁵ As a guiding principle, the Commission should limit its referrals to instances in which an entity that has not been vetted previously would obtain an interest that requires foreign ownership review. Pursuant to this principle, the Commission would not refer *pro forma* applications or notifications to the Executive Branch agencies, unless the transaction involves new foreign ownership that requires a petition for declaratory ruling.¹⁶ Similarly, the Commission need not refer applications “when the applicant has an existing LOA or NSA and there has been no change in the foreign ownership since the Executive Branch and applicant negotiated the relevant LOA or NSA.”¹⁷

The Commission and the Executive Branch agencies should not add steps and additional review for proposed foreign ownership interests that are already subject to scrutiny. As an initial matter, all common carrier licensees are subject to section 310 of the Communications Act

¹⁴ *Id.* See also, e.g., Wiley Rein Comments at 15 (“There is no reason why the Team Telecom process should be of indefinite duration while the similar reviews conducted by CFIUS are not. Indeed, CFIUS manages to coordinate across a greater number of agencies than Team Telecom while meeting a statutory timeclock.”).

¹⁵ NPRM ¶ 47.

¹⁶ See, e.g., CTIA Comments at 5-6; Comments of T-Mobile USA, Inc. at 4-5 (“In T-Mobile’s experience, Team Telecom’s review of even routine applications involving no change in foreign ownership regularly extends the normal processing time of FCC applications by many months and sometimes a year or more.”) (“T-Mobile Comments”).

¹⁷ NPRM ¶ 47. For purposes of this limitation, the Commission should make clear that “there has been no change in the foreign ownership” if no new interest holder requires approval. Otherwise, *de minimis* changes in foreign ownership unnecessarily could trigger additional review obligations.

of 1934, as amended, and the Commission's implementing rules, which require the filing of a petition for declaratory ruling before certain new foreign interests can be introduced.¹⁸ After a foreign ownership petition has been granted, the FCC's rules generally require prior approval before a new foreign entity obtains more than five percent of a licensee's outstanding equity or voting interests.¹⁹ Even before the FCC's current rules were adopted, the Commission limited the new foreign ownership that a licensee could introduce without seeking further approval.²⁰

There already is support in the record for this common sense approach. For example, the United States Telecom Association noted that the "scope of any requirements to submit information and certifications up front should be as narrow as possible" since "not every application involving foreign ownership (in particular, *de minimis* foreign ownership) raises national security or related concerns."²¹ Similarly, T-Mobile correctly asserts that "there is no

¹⁸ 47 U.S.C. § 310(b); 47 C.F.R. §§ 1.990, *et seq.*

¹⁹ 47 C.F.R. § 1.994(a)(2). When an interest is designated as "exempt" pursuant to section 1.991(i)(3) of the Commission's rules, prior approval of a new interest is not required until the interest exceeds ten percent. In order to qualify as "exempt," however, the foreign interest holder must not exercise any control over the licensee.

²⁰ See, e.g., *Applications of SOFTBANK CORP., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation for Consent to Transfer Control of Licenses and Authorizations; Petitions for Reconsideration of Applications of Clearwire Corporation for Pro Forma Transfer of Control*, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, ¶ 124 (2013) ("The Licensee Subsidiaries may accept up to and including an additional, aggregate 25 percent equity and/or voting interests from these foreign investors and other foreign investors without seeking prior Commission approval, subject to the following conditions. First, the Licensee Subsidiaries shall obtain prior Commission approval before any foreign individual or entity acquires a direct or indirect equity and/or voting interest in post-transaction Sprint in excess of 25 percent. Second, the Licensee Subsidiaries shall obtain prior Commission approval before Sprint's direct or indirect equity and/or voting interests from non-WTO Member countries (including interests from unidentified investors) post-transaction exceed 25 percent.").

²¹ Comments of the United States Telecom Association at 3. See also, e.g., Comments of the Satellite Industry Association at 2 (the Commission "should carefully limit the scope of any new disclosure obligation to ensure that it does not burden parties filing applications that

public interest rationale for subjecting to [Executive Branch] review applications that do not propose new or changed foreign ownership.”²²

Designating Points of Contact. The Commission should adopt its proposal that applicants be provided with the “names and contact information of the individuals in the Executive Branch who are reviewing their applications.”²³ As Commissioner O’Rielly stated, it is “very difficult to address concerns when applicants don’t even know which agency is lodging them, let alone who in that place can facilitate a resolution.”²⁴ Sprint previously noted that the Commission frequently follows this practice in its releases²⁵ and knows well from its own experience that providing this information facilitates communications between applicants and agency staff. In turn, such communications allow questions and concerns to be addressed expeditiously. Moreover, this measure would advance the Commission’s policy goals by increasing transparency²⁶ – a welcome first step away from a process that is widely perceived to

typically would not be of interest to Team Telecom”); Wiley Rein Comments at 8 (“There is no basis for Team Telecom review of applications that do not involve triggering foreign ownership.”).

²² T-Mobile Comments at 8.

²³ NPRM ¶ 37, citing Comments of Sprint Corporation at 3 (“Sprint Comments”).

²⁴ NPRM at Statement of Commissioner Michael O’Rielly, FCC 16-79 at 50.

²⁵ Sprint Comments at 3.

²⁶ See Report on FCC Process Reform, appended to Public Notice, *FCC Seeks Public Comment on Report on Process Reform*, 29 FCC Rcd 1338, 1343-44 (2014) (DA 14-199) (identifying Commission goals such as “improving the efficiency and effectiveness of how the agency conducts its business,” “processing items before the agency more quickly and more transparently,” and “improving interactions with external stakeholders”); NPRM ¶ 9 (noting that the Commission recently has “undertaken an extensive effort to ensure that it operates in the most effective, efficient, and transparent way possible, including processing applications more quickly and transparently”).

be an “inextricable black hole”²⁷ in which the applicant “receives little feedback . . . about status, the timeframe for the review, specific concerns the agencies may have, or how they can be mitigated.”²⁸

While agencies should provide detailed contact information, they should at a minimum be required to: (1) provide a single point of contact for all inquiries related to FCC applications and then (2) identify the “point agency” for each application. The first measure would create a list composed of the appropriate individuals to contact at each agency with inquiries related to FCC filings, while the second measure would identify the appropriate agency for a particular application. Taken together, an applicant would be able to readily identify a single point of contact at a single agency for its filing. These simple actions are likely to streamline the review process and certainly would be more effective than identifying only the Executive Branch agency an applicant should contact.²⁹

CONCLUSION

Sprint appreciates the opportunity to submit further comments in this proceeding. As the Commission and NTIA have recognized, additional measures are needed to “advance the shared goal of making the Executive Branch review process as expeditious and efficient as possible.”³⁰ In designing and implementing reforms in this proceeding, the Commission should ensure that all changes to the existing process advance this goal and spur the types of foreign investment that

²⁷ Commissioner Michael O’Rielly, *Team Telecom Review Need More Structure* (Sept. 18, 2015), <https://www.fcc.gov/news-events/blog/2015/09/18/team-telecom-reviews-need-more-structure>.

²⁸ Wiley Rein Comments at 5.

²⁹ NPRM ¶ 37 (seeking comment on whether the Executive Branch agencies should identify a “point agency for referral of applications and any inquiries the Commission or applicants have during the course of the Executive Branch review process”).

³⁰ NTIA Letter at 4.

have “been and will continue to be an important source of financing for U.S. telecommunications companies, fostering technical innovation, economic growth, and job creation.”³¹

Respectfully submitted,

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³¹ *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act, as Amended*, Second Report and Order, 28 FCC Rcd 5741, ¶ 3 (2013).